

THE MAIN FEATURE IN THE EFFECTIVENESS OF DEPRIVATION OF LIBERTY

J. VIGH

Professor

I. TAUBER

Assistant

A team at the Department for Criminology at the Law School of Budapest Eötvös Loránd University carried an empirical study, entrusted by the Ministry of Justice for outlining effectiveness of deprivation of liberty.

(We intend to have the detailed data published in a book.)

The aim of the research was twofold: partly to elaborate the exact indices of effectiveness, on the other hand to estimate the general and special preventive effect of imprisonment in Hungary by applying the indices elaborated.

The research activity had been preceded by wide-ranging study of the relevant international literature, based on which it seemed to be rational to raise a few theoretical questions.

1. Theoretical introduction

The survey shows that the efficiency of punishment is turning up in the relevant literature more and more frequently enhanced by the criminal policy executives. All that seems to be rational as the preventive aim of punishment can be ensured by applying effective measures against criminals only. However, experts are not always aware of the fact that one can speak about the effectiveness of punishment only in case the aim of punishment is defined in the prevention, the social re-adjustment of the offender. In case retribution is considered as the aim of punishment the requirement for investigating its effectiveness may not even arise, as the aim of punishment is completed automatically by having served the sentence. Accordingly, the investigation of the efficiency of punishment, getting more and more intensive, proves — among others —, that retribution and repression are getting less important means in the fight against criminality, while psychological personality treatment and persuasion are getting more and more into the fore.

In the relevant literature the effectiveness of punishment is often reduced to the realisation of the *special* preventive aim. That is why the grade of efficiency is expressed directly or indirectly in the theoretical standpoint

as to which punishment is considered to be efficient in case it prevents the condemned from committing any further offence, under whatever living conditions he may get.¹ So the expectation concerning punishment is to train the condemned against criminogenic effects of the surroundings and to strengthen the intention of adjustment to the social and legal requirements, prevailing in the majority of the population. Provided we accept this standpoint fully, the efficiency of punishment may be estimated with the indices of recidivism. Most of the researches carried in criminology rely on this conception.² However, there are certain standpoints, according to which the efficiency of punishment in the field of special prevention may be measured rather indirectly and with the correction of indices of recidivism, as they application of punishment — mainly deprivation of liberty — only call for the intention of the offender to get adjusted to society.³ Provided the individual condition for the social adjustment has come about, the punishment exerted a favourable influence, so serving its aim. The objective conditions may be defined in the facts that similar to any other person, who has no intention to commit a crime, namely that eventual criminal act may depend on the constellation of subjective and objective features, respectively the future effects.

Whichever viewpoint we may consider would not suffice for an embracing evaluation of reality. Investigating the efficiency of punishment we have to accept the fact that the means of penal law alone are not effective enough for preventing the criminal act. We also have to keep in mind that the legal procedure and the punishment in the fight against criminality may be only one, yet very important means of prevention, along with further administrative and social regulations. Consequently, the *occurrence of crime and recidivism cannot be attributed to the effectiveness of punishment, respectively its lack only*. It may often occur that the application of law instill the condemn for definite adjustment, while the external, objective circumstances and living conditions make him commit further crimes. As to criminological studies 50% of the condemned to the previous surroundings which influenced the fore committing the offence.⁴ We may, however, find a lot of instances where the intention for adjustment in the condemned does not come about on the impact of the punishment and no further crime is committed, as the objective conditions of the condemned get stabile and favourable and the individual accepts the necessity for conformity to the law. Accordingly the statement that the future lawabiding behaviour may be not necessarily attributed to the favourable influence of the punishment is justified.⁵

The two fundamental components of recidivism or the law-abiding attitude of the condemned are the individual and the objective conditions. Both may be positive and negative, their strength and interrelations can be decisive for the future character-formation of the ex-condemned.

These statements construed on the widest general level are applicable to all sorts of punishments. Although, the investigation of efficiency arises most frequently in cases of imprisonment, the rest of punishments cannot

be neglected either. However, there are a lot of questions in this field which cannot be answered in an exact way.

Questions of this kind are e. g.: when is the intention for social conformity manifested at juvenile delinquents reprimanded by the Court; or at the adult, having received a warning based on par. 60. of the Penal Code. Has it developed on the impact of the regulation or could it have started earlier? In case we presume the latter, the question arises, whether it may not be more sensible to deal with the estimation of the effectiveness of punishments and measures only, which can formulate the intention for law-abiding attitude of the individual in the course of the execution. Or would it be more justified to speak about the efficiency of the whole criminal procedure than that of punishment alone? Yet similar questions may be put concerning fines or any other sentence ruled, which do not call for any post instruction of reformatory inspection. It goes without saying that the different sorts of punishment cannot have a uniform impact on securing the special prevention required. The sentence including a wide range of diversity are just ruled in accordance with the gravity of the danger arisen against society. The different sentences brought during the proceedings of differing criminal cases for exerting the intention for adjustment to conformity cannot be compared exactly or grouped in the same category.⁶ Especially if we estimate the efficiency with a view to recidivism.

Provided we investigate the special preventive effectiveness from a primary aspect, namely that of the adjustment respectivel social conformity, the effectiveness of certain sorts of punishments cannot be taken into consideration, as these are applied under the supposition, that the defendant will abide to the law, recidivism is not likely — accordingly a minor deprivation of social functions will suffice for strengthening the sense for responsibility and secure the general prevention. All these facts show that the efficiency of punishment ought to be studied further than the formation os social adjustment respectively but its realisation too.

So far we have examined certain theoretical questions in the special preventive efficiency of punishment and it may be stated the the estimation of efficiency is not precisely worked out, and a range of theoretical and positive questions have not been answered yet. These arise mainly in the course of *estimating the general preventive* impact of punishment. Turning to one of the fundamental theoretical questions, we see that some of the experts consider the special, while others regard the general prevention to be of primary importance, id. e. to which the content of punishment ought to be applied primarily.

At present it is evident that the general preventive influence is destined to promote the formation of social consciousness for meeting the social requirements, in other words discouraging people from committing offences by holding out and imposing a disadvantage. This is valid for cases where no specific punitive institutions for special prevention would be needed, as the consequence of the deed and the situation arisen later have already exerted sufficient preventive impact. In such cases the ruling of some sort of punishment may be justified for the sake of general prevention only.

The most widely spread conception concerning the general preventive influence is based on the supposition that the least reliable members of society are mainly concerned, so that the relevant institution should exert a prevention against the commitment of any offence by these people.⁷ Some specialists believe that this prevention is applied in a rather restricted circle,⁸ others presume that this preventive influence is felt in wide layers of the population.⁹ In our opinion — disregarding the numerical part of the imbalanced population — the general preventive influence of punishment cannot be reduced in such a way.

The criminological investigation concerning the general preventive influence of punishment is faced with specific difficulties; it is rather hard to estimate the proportion, the punitive measures represent among the diverse factors influencing the law-abiding behaviour in the wide range of the population. Based on the surveys taken so far we may ascertain that this influence does exist and that this is differing from person to person. At present it is not proved at all, which kind of punitive measures ensure the most favourable preventive influence. Over a long time the conception had prevailed as to which the strict, rigid sentence, antailing a severe set-back (suffering physical and emotional pains), eventually the capital punishment, taking life would exert the most deterrent influence and discourage people from committing crimes.

By now it has been seen in practice that elimination of the so called rigid sorts of punishments has not brought about a significant rise in the number of criminal acts. No capital sentence or punishments causing specific sufferings are necessitated in the motivation-struggle, where the probability of publishing the case may be enough, that the obligatory stimuli should take the upper hand; the same might be enhanced by imposing deprivation of the position, financial disadvantage or the possibility of imprisonment.

A century ago Marx wrote in his article "On Capital Punishment" "History as well as statistics prove that the world has not improved either frightened by punishment since Cain in the Bible. Just the contrary may be said."¹⁰ The Marxian idea is getting to be understood more generally in our days. So is the frequently quoted Lenin statement that the general preventive influence of punishment is not reflected in the severity, rather in the fact that punishment cannot be avoided. Several surveys show that f. e. strict reprisals of prison sentences for long years do not frighten or keep away the condemned from committing further crimes.¹¹

2. The main results of the empirical research carried by the team of the Department for Criminology

a) Methodical questions

Based on the international relevant literature and the results reached in research so far, we endeavoured to elaborate the indices pointing to the

effectiveness of the special and general preventive influence of deprivation of liberty.

In the course of our research activity — based on the time, funds and possibilities at our disposal — we tried to apply a retrospective method, in other words, we studied the effects of past factors and construed our conclusions, statements and suggestions accordingly.

We collected our data by distributing questionnaires

1. concerning people with clear records
2. non recidivists
3. recidivists

We also drew a line whether the condemned's first punishment had been suspended or not. The groups under investigation were completed with a fifth, namely comprising those who had been repeated recidivists (three times at least). Consequently, including the group of non-condemned we investigated the diversity in 6 groups.

As to the system of investigation we have reached the results as follows:

1. *In view of investigating the efficiency of imprisonment we found that three years from the date of discharge might be enough to indicate the tendency of the future behaviour for the majority of former convicts.* In the two groups of first recidivists studied, the proportion of recidivism was the highest in the three months following the discharge, namely 25–30%, the highest ratio decreasing gradually further on. In the following three months 15–20% got recidivists. Thus, 50% of recidivists took place within the first six months. 70–75% of the recidivists will commit the next criminal act within one and a half year. After three years the *annual* recidivism comes up to 2–3% only, which hardly exceeds the proportional rate of crimes committed by the population as a whole. These figures show that recidivism can hardly be related to previous sentences after three years.

Based on these data we may draw the following conclusions:

a) A span of three years is sufficient for investigating the efficiency, but may be also enough for defining the penal legal conception of recidivism.

b) The investigation of efficiency may be reduced to 18 months for operative research, as the majority (3/4) of recidivists will commit the next crime within this period so the prospective investigation methods may get into the fore.

c) Probation (after-care) is of great significance mainly in the period right after discharge, as the effective support given at that time may contribute to the social adjustment of the convict to the highest extent.

2. Considering that most of our information had been furnished by convicts, a certain control of veracity was necessitated. We succeeded in elaborating a control-system under which the authenticity of the data

could be checked exactly. During our investigation we found that the number of incorrect answers to the objective items did not surpass the normal error-limits. In the case of subjective answers some 8–10% of the condemned tried to give a more attractive, respectively more favourable inside of their personality. We do not consider necessary to speak about these methods.

b) *The realisation of the special preventive influence of punishment*

In our literary survey we indicated that in our opinion the special preventive impact of punishment respectively its lack cannot be estimated based on the proportion of recidivism, the aspect of adjustment-intention and the urge for conformity may demonstrate the favourable effect of the punishment in a more convincing way.

According to our data *two-third of the first-time recidivists, a few months before their discharge, confirmed that their intention to social adjustment and not committing any further offence was formulated by the first punishment. The same number of people said to have taken some steps to this, end, re-established their family life, took up permanent jobs, gave up contacts with bad company a. s. o.), yet despite all these they relapsed again. Provided we accept the authenticity of these data (which we found justified), we may state that the urge for adjustment to society is not prevailing at 30% of the recidivists even after the first deprivation of liberty either. This proportion may be more favourable at those who have not or will get recidivists. However, concerning these we do not dispose at any data, as we could have contacted them after their discharge only. The ratio of two-third — and one third (positiv-negative) for the active attitude concerning the urge for adjustment proves that the special preventive efficiency of punishment cannot be measured at the rate of recidivation, as in our sample-groups 70% of the condemned faced recidivism, despite of the supposed favourable influence of the punishment, obviously due to the negative influence encountered after the discharge.*

This conclusion for the intention of adjustment is supported by our data taken on the intensivity of the urge for reaching this demonstrated, right after the discharge.

The category of those, who are for adjustment and that of people showing an active attitude are so to say similar, though, not always of the very same group.

	Active behaviour		
	Yes	No	Total
Decision			
Yes	127	25	152
No	27	23	50
Total	154	48	202

The data show that from among those, who decided (152 people) not to commit any further crime — around 80% (127/152) did actually something for the sake of their re-adjustment to society.

In the case of 20% the decision was not followed by any active behaviour, while 54% (16% of the total) who did not decide to refrain from further criminal acts, tried to conform with the social requirements — as a consequence of the favourable circumstances following their discharge.

Accordingly, the realisation of the special preventive effect of punishment is not so much the consequence of the influence of punishment but may be rather attributed to the objective circumstances following the discharge.

This statement can be, however, justified not only in positive sense, but in a negative one too. As a matter of fact recidivism may take place despite of the favourable influence of the punishment and the ex-convict may resist the unfavourable effect of the punishment and from the decision to conform. Thus the question may arise, whether the effect of the deprivation of freedom can be measured with the formation of the intention for social adjustment, and with the strength of this intention.

In the course of our study on the direct effect of punishment we raised the question, that is investigated, whether the condemned had been induced to observe the rules of the Penal Code, stimulated to commit further crime or was the effect of punishment quite indifferent concerning the behaviour. See a few figures among the recidivists condemned to imprisonment the first time too:

Punishment induced		
— observing the penal law	79	39%
— further crimes	20	10%
— indifferent effects	79	39%
— no answers	24	12%
Total	202	100%

These data are rather surprising. Hardly more than one-third of the first convicted to deprivation of freedom had been induced to observe the law, while 10% were enhanced to commit further crimes. The effect of punishment remained indifferent on the rest (39%). Based on these data the positive influence of prison-sentence is very low, even if we keep in mind that the figures refer to recidivists and the ratio may be higher in case of non-recidivists. The answers given by the repeated recidivists indicate that even this unfavourable ratio drops with the rise of condemnations. Well, if we compare these data with the proportion reflecting the intention for adjustment, it is clear that the formation of this intention cannot be closely linked with the favourable effect of punishment, but the objective factors encountered after the discharge do play a decisive part; this may be whether family life is intact or disrupted, friends or other social contacts.

Consequently the index for the favourable effects of punishment for deprivation of liberty among repeated recidivists drops to 30–40%. As a matter of fact we could evaluate the result in saying that the prison-sentence exerted a favourable effect on 40% of those, who became recidivists later on. It would be rather instructive to learn the number of those non-recidivists, who had been stimulated to observe the law, following the first prison-sentence served. To get these figures would call for such a lot of work and time, we certainly had not had at disposal during this investigation.

We endeavoured to illustrate the favourable or unfavourable effect of the sentences for imprisonment by putting question concerning the interaction between the first punishment and second crime. 41% (83 people) in the mentioned sample-group answered, there were certain connections. As to the diversity of these connections see the answers:

Further crime was committed		
— with former co-prisoners	12	14%
— elaborated during imprisonment	3	4%
— to demonstrate hatred against jurisdiction and application of the sentence.	13	16%
— because of other reasons + no answers	55	66%
Total	83	100%

Although, the category "because of other reasons + no answers" is rather high, the relevant concrete answers may influence the ratio in the three categories illustrated. Accordingly, we can ascertain only that *the number of recidivists, whose further criminal acts may be attributed to the first prison-sentence is rather high. It may be also stated that his interaction is getting closer as a consequence of repeated convictions.*

The above data lead to the conclusion that the present application of prison-sentence does not exert a favourable effect on the majority of the recidivist convicts. It may be justified to raise the idea: a certain number of recidivists has relapsed even because of the unfavourable influence of the prison-sentence. This statement is supported by the answers of convicts given to questions concerning the effectiveness of their *current* imprisonment. To the question, would you commit another crime after discharge, 13 person (6%) answered yes, 18 people (9%) did not answer and 85% believed, they would refrain from further criminal acts. In view of these data referring to the intention for adjustment, we may see that these are rather similar to those following the first punishment. However, good intentions alone do not lead to the stabilisation of a law-abiding way of life.

75% (154 people) of repeated recidivists confirmed to have positive plans for social adjustment. These 154 people based their intention to confirm on the following:

Work	67	29%
Decent family life	48	21%
Will power	21	9%
Giving up drinks	9	4%
Study, education	9	4%
Scare of preventive detention	7	3%
To think more before acting	6	3%
To avoid bad company	5	2%
Change domicile	5	2%
To look for another job	5	2%
Diverse	46	21%
Total	228	100%

(Some convicts referred to more than one item)

As seen work and family life have an outstanding role in the plans of social adjustment. This is natural, as in case these two main fields in human relations are disorganized, the social standing of the individual gets distorted. The scare of preventive detention may be worth mentioning out of the other items. To terrify alone cannot be the objective of any form of punishment, yet the preventive aim may be secured by means, detriments, which — apart from the reforming influence — may be adequate for motivations to refrain from further crimes in the course of formulating ones objective in life. The prison-sentence for a relative uncertain time seems to be the adequate means for the repeatedly convicted.

The plans for social adjustment among the majority of repeated recidivists remain unrealised in most cases. Those having no plans, nearly certainly — as well as the majority of those, who formulate some plans — will most likely commit further crimes either due to their personal inclination or on the influence of external circumstances. The slight probability of being able and the wish to conform has been demonstrated among one-third of the people concerned only. The presented evaluation in the investigation of the subjective conditions of recidivists points to a certain interrelation and by which indices the effectiveness of punishment may be measured, on the other hand it shows the validity of these indices in our country at present.

The formation of these indices also shows that the *investigation of special prevention cannot be restricted to the effect of punishment exerted on the convicts only but that the penal law, penal procedures, and the execution of punishment and the whole system of penal jurisdiction and its effectiveness ought to be the subject of a simultaneous, comprehensive investigation.*

The indices, based on the subjective answers concerning the special preventive effectiveness of imprisonment mainly serve to illustrate the situation given. The explanation of the numerical value of the indices may be found in the objective circumstances, and the objective characteristics mentioned by the convicts themselves.

Summing up the present of the execution of punishment, we may say, that our prisons are yet in many respects, the sites of proportional, repressi-

ve punishment, though, the favourable shift in proportion proves that the search for effective criminalpedagogical means is going on.

In the course of our study concerning the effectiveness of punishment on recidivist as regard their intention for adjustment, we completed their answers with the relevant objective data at hand.

Thus, it can be stated, which features are characteristic for these, the punishment affected adversely or those not formulated any intention for social adjustment. The majority of those, who did not formulate any intention for adjustment, or did not do anything for adaptation on the influence of the first punishment are young people, single or divorced. These two demographic features are of course connected, yet the ratio of single and divorced is not subjected to an age-group, as among the convicts sentenced for the first time, who do not have any plans for adjustment, the most outstanding age-groups are the 26 — 30 and not the 19 — 25 years old.

The majority of this group of recidivists came under the young-adult age-group, when having committed the first crime, thus *proving the justification of specific penal regulations of the young adults*. Obviously the age reached does not mean the years passed since the birth-date only, but indicates certain definite, knowledge, family-ties, experiences as well as a social standing. One can and ought to reveal the specific social characteristics of age-groups which may contribute to and facilitate the offense of penal rules and lead to recidivation, for enabling us

1. to elaborate the specific forms of taking to responsibility
2. to work out the adequate criminalpedagogical process inducing the convicts for abiding to the law
3. to define the instructions ensuring the objective terms for the convicts social adjustment.

The high ratio of people living on their own, or among strangers may serve as a characteristic indicator for those, who do not dispose of any wish for adjustment.

The data for our study reveal that *minimal school attendance, lack of occupational skill* are often co-related with the wish not to adjust at all, and the unfavourable effect of punishment. In our opinion all that mainly derives from the very fact that these people have got no education in the very sense of the word. They had never been trained for liking work, for meeting the fundamental requirements of society, to respect other people's basic rights, neither to accept as an object of life, the way of living approved by the majority. Accordingly the number of unemployed-loafers, who change jobs frequently is of course very high among them. Love for work or its lack, may be a decisive factor in influencing a person's future behaviour. So we believe *the approach to work* is one of the most important features, that has to be considered with greatest attention at ruling or carrying out the sentence, as well as, in the course of post-prison care. The research carried in the field of individual prognostics also shows that devotion to work and working possibilities play a decisive role against recidivism.

As to schooling — the most striking category comprises those, *who started any kind of school, but did not finish studies*. According to the data, among the condemned are not the most primitive ones, "the gullibles", who do not want to conform at all, but those whose career is a failure, cannot find their place in society, experienced a great miscarriage. A considerable number of these people stand up against society, formulate their own code of moral. We believe that our present penal and correctional system, and our tentative post-prison care is so to say powerless, can do very little to reform these persons. This is understandable, because this would necessitate such wide-ranging social regulations, which surpass the rather limited sphere of the law application in this field. A possible solution could be the extension of the penal-procedure to the field of resocialisation, and extending prevention and resocialisation to the society as a whole. People with lack of any intention to conform, proving the negative influence of punishment, adjust less not only in life but in the prison too. So f. e. *but 26% of the recidivists sentenced to imprisonment did not come before the disciplinary authority. Over one-third of the castigated got punished four times or even more often*. This shows that round 25% of the whole group violates the prison regulations permanently. This repeatedly castigated so called "bright guys" even frequently boast with their protecting behaviour and want to be admired, thus gaining authority among the rest of prisoners. Tattoo is a demonstrative sign of this. Round two-third of the active non-conformists are tattooed. This represents among these people a sort of sign of solidarity, of belonging together, a symbol of the "fair underdog", who protest and reject all the norms of the establishment.

It can be proved by logics that a *short term of imprisonment* cannot have any favourable effect on these people, mainly in view of the pedagogical system at disposal today. Our empirical data available also show that prison terms shorter than 6 months are ruled at a threefold ratio for those who do not want to confirm, than among people, who try to adjust themselves. *All these clearly prove that the short-term deprivation of liberty cannot be an adequate punishment for reforming people of such distorted personality, living under the specific objective conditions, and preventing them from committing further crimes*. These people cannot be changed by longer prison sentences either, but should obtain an active effective indoctrination through the application of criminal pedagogy for the sake of the society.

We have already mentioned that our data show that the first, prison-sentence induced but one-third of the recidivists for abiding to the law. The remaining 60–70% comprise mainly these culprits whose objective conditions formulated a protest-attitude, dangerous to society, so no form of freedom deprivation, suspension of the sentence, least the execution, could exert a favourable influence on them. Our study does not cover the possibility to indicate the exact numerical ratio of the present punitive regime for the lacks of the favourable influence. It is, however, evident that over 50% of the condemned has not experienced any favourable in-

fluence, which cannot be primarily attributed to the ineffective punitive-regime. In the course of the investigation our attention was drawn to several inter-actions, which require the modification of the punitive system and the procedure of ruling. It has become obvious that criminal-pedagogical means and ways have to be applied to a higher extent. Yet besides all these it is the post-prison care — activity, that calls for the greatest efforts. Summing up the to-date changes in these three fields of the effectiveness of special prevention we may conclude: more has to be done for the criminals, as criminality is mainly caused by certain social circumstances.

At present recidivism is often brought about by the *wrong value — judgement of the population toward the ex-condemned*, the rejecting or indifferent attitude. According to our data but one-third of the ex-condemned were helped, another third encountered indifference, while 15% were excluded from and despised by the community. The assistance given to one-third of the ex-convicts is rather little in view of their wide-ranging resocialisation required, yet it points to the advantageous process for a change in public opinion to wards the ex-condemned. We believe, *the increased adaptation of ex-condemned may take place in an open atmosphere of helpful readiness, based on the right requirements and control only*. Around 50% of the ex-convicts say, it is better if the colleagues know about their part and they need not lie or be secretive. But one-third would prefer not revealing their past at the new working place. We are under the impression, this chance ought to be given to the ex-condemned, yet it is realistic to warn them, that their record would come to light sooner or later, so this might cause further disappointment, alienation or even enmity.

c) *The realisation of the general preventiv influence of punishment.*

Based on our pre-studies on the effectiveness of general prevention we stated, that some 90% of the population takes any punishment for prison-sentence, which clearly reflects the prison-central Penal Code. Accordingly, the general preventive influence of punishment is essentially analogous with the general preventive influence of deprivation from freedom.

During our empirical investigation we interviewed 616 never condemned persons on whether they had ever been in a crime enhancing situation, what made them refrain from committing the act, finally asked those, who never faced such situation, why they had not committed any crime up to that time. The main groups of refraining factors are:

1. Scare of punishment;
2. The consequences of criminal procedures, the troubles going with them (different factors)
3. Motivies of conscience.

Although the rang-listing of the factors is also reflected in our survey, we consider realistic to illustrate the data, indicated on the first place only: *Distribution of the factors primarily restraining from committing crime*

Scare of punishment	73	12%
Troubles in the course of criminal procedure	24	4%
Less of job or position	16	3%
Morale condemnation at the working place ..	37	6%
Eventual family conflict	26	4%
Motives of conscience	397	64%
Diverse	44	7%
Total	616	100%

As to our table the ratio of 64% of those, who refrained from committing crime due to favourable individual inclination regardless to any motivation or factor mentioned above is rather high. All these clearly show that two-third of the interviewed — and this may refer to the population in general — are on the social level, where people do not refrain from committing criminal acts because of fear of punishment or troubles deriving from penal procedures, but observe the law, based on their moral conviction. It goes without saying, that such an individual disposition and the deployment of such a high level social personality also reflect the prevailing penal system none the less its influence. These people display a conscious attitude for meeting the social requirements, so the penal objectives get integrated into the character of the individuals, accordingly the voluntary law abiding behaviour is the primary interest of the persons themselves.

Among the restraining factors scare of punishment represent but 12%, other factors interlinked with the fear of taking to responsibility come up to 17%. The proportions justify the Lenin thesis: *The efficiency of punishment, mainly the general preventive effectiveness, does not derive from the severity of the sentence, rather from the prevailande and unavoidability.* We may add that a lot of people even do not know what sort of punishment they would face for eventual prohibited conduct, they consider this as an abstract setback which has an advantegous effect in fear of the disadvantage.

At investigating the distribution of restraining factors on the basis whether the data-furnishers had been in a crimeenhancing situation or not, the most significant differing factors may be found in the ratio of those connected with criminal procedure. This proportion-shift of factors may be explained by the fact that under a criminogous situation the motivation-struggle will get a more domineering consideration for committing the crime. So a broader range of motives may contribute to necessitating the reconsideration of all eventuell consequences.

Thus, although the right consciencior attitude and highly socialminded personality are the most constructive reatrainng factors among two-third of the population, the role of the situation cannot be ignored at all, as where this positive personal approach is not performed — seemingly among one-third of the inhabitants — the criminogous situation may play an important, yet a decisive role, depending on the impulse of the accompanying obligatory motives.

Based on our data we may examine the restraining factors from the aspect education, occupation, age and sex as well. Owing to our limited possibilities we show the data referring to the school-years in order to demonstrate their distribution in the fear of punishment and emotional motive, the two main categories.

Schooling	Score of punishment		Motives of conscience	
4 classes	3	18%	7	41%
5 — 7 classes	6	15%	22	55%
8 classes	18	17%	61	58%
Attended technical school — studies not finished	3	11%	17	60%
Trained at technical school	12	15%	54	69%
Attended secondary school — studies not finished	7	18%	18	47%
Attended secondary school	16	8%	136	69%
High school studies not finished	4	7%	38	67%
High school degree	4	7%	45	79%
Total	73	12%	397	64%

The distribution of the two factors show a contrasting tendency. Parallel with the higher education does the ratio of motives of conscience rise, while the number of those who refrain from committing crime because of the fear of punishment — drops. These contradicting tendencies clearly show that education is closely linked with the positive conscious attitude leading people to the right realisation of social requirements, thus accepting these for their own benefit. Further on, these data support our opinion that those, who started and discontinued their studies at any secondary or highschools could hardly ever adopt themselves to the social requirements. The ratio of these who refrain from committing crimes because of the scare from punishment is rather significant even among the people in these category who have never been condemned. At the same time their number among those who refrain from committing crime for motives of conscience is outstanding low. Consequently the careers failed, frustrated life and expectations are more significant criminogenic factors and cause more difficulties in the adaptation of people to society, than we have believed so far.

* * *

Summing up the investigation on the effectiveness of the general prevention of punishment, we may conclude that for achieving efficiency no "rigorous" punishment, rather greater efforts ought to be taken for ensuring the requirements of special prevention and for the interest of unavailability of punishment, even concerning one-third of the lesser conform or socialised members of the population.

Accordingly, we may summarise that results of our research on the effectiveness of deprivation of freedom that in the sake of preventing criminality prison sentence may be applied only in case any other punishment has failed or the probability of further criminal acts prevails. In these cases the term and intensity of deprivation of freedom should be applied far more in conformity with the personality of the offender. Increased care ought to be provided for bringing about objective conditions suitable for the social adaptation of the discharged. Finally the society has to take greater efforts for increasing the effectiveness of schools and education within the family, as well as, the right solution of social-political problems.

REFERENCE MATERIAL

¹ See: *A. E. Natasev—N. A. Sztruskov*: Tyeoretyceseszkaja osznovo iszpravityelnovo-trudovovo pravo. Moskva, 1967.

² See: *Dr. P. Uusitalo*: Aterfall i brott after frigivning fran oppna reszpektive slutana anstalter. In *Collectes Studies in Criminological Research*. Vol. I. Council of Europe, 1968 *Dr. Davadivic et al.*: Efikasnest kratkih kazni lisenja slobode. Beograd, 1965.

³ *J. Vigh—K. Gönczöl*: A fiatalkori bűnelkövetők redukációja az utógondozás során. (Reeducation of Juvenile Delinquents in the course of post-prison care.) *Jogtudományi Közlöny*, 1972. 8. sz.

⁴ *I. V. Smarov*: Krityerii i pokazatyeli effektivnoszty nakazanyij. Szovjetszkoje Goszudarsztvo i Pravo, 1968. 6. sz.

⁵ *Dr. R. Hood*: Research on Effectiveness of Punishments and Treatments. In *Collected Studies in Criminological Research*. Vol. 1. Council of Europe, 1967. *G. G. Zlobin*: Ob izucsenyii effektivnoszty ugovovno nakazanyija. Szovjetszkoje Goszudarsztvo i Pravo, 1969. 6. sz.

⁶ See *Dr. R. Hood* op. cit.

⁷ See *Smarov* op. cit.

⁸ *N. A. Beljajev*: Celi nakazanyija is szredsztva ih disztizsenyija v iszpravityelnih-trudovih ucsreszgyenijah. Leningrad, 1963.

⁹ *A. B. Szaharov*: O licnosztyi presztupnyika i pricsinah presztupnosztyi v. Sz. Sz. Sz. R. Moszkva, 1961.

¹⁰ *Marx-Engels Művei* (Works) S. k. Budapest, 1961. 489 pp.

¹¹ *Hammond, W. H. and Chayen, E.*: Persistent Criminals. Tavistock Publication, London, 1953.

ГЛАВНЕЙШИЕ ХАРАКТЕРНЫЕ ЧЕРТЫ ЭФФЕКТИВНОСТИ НАКАЗАНИЯ ЛИШЕНИЕМ СВОБОДЫ

Д-р ЙОЖЕФ ВИГ

профессор

Д-р ИШТВАН ТАУБЕР

старший преподаватель

(Резюме)

Группа Кафедры криминалогии производила исследования по разным группам осужденных, чтобы определить показатели измерения эффективности, и чтобы при их помощи вымерить эффективность наказания лишением свободы с точки зрения генеральной и с точки зрения специальной превенции.

Доля рецидива является грубым показателем эффективности. Более ясной является доля тех освобожденных, которые после освобождения имели намерение приспособиться к обществу и отказаться от совершения новых преступлений. Но благоприятное и неблагоприятное влияние на осужденных отражает наиболее ясно специально-превентивное действие наказания. (Научная работа содержит соответствующие эмпирические данные.)

Генерально-превентивное действие лишения свободы непосредственно ощущается приблизительно у одной трети населения. У двух трети появляется только косвенное действие.

Для исследования эффективности достаточно лишь три года после освобождения, так как преступления, совершенные после этого периода, не связываются с действием наказания.

DIE WICHTIGSTEN CHARAKTERZÜGE DER WIRKSAMKEIT DER FREIHEITSSTRAFE

von

DR. JÓZSEF VIGH,

Universitätsprofessor und

Dr. ISTVÁN TAUBER,

Universitätsassistent

(Zusammenfassung)

Die Lehrstuhlgruppe für Kriminologie führte in verschiedenen Gruppen der Verurteilten empirische Untersuchungen durch, um die Ziffern der Wirksamkeitsmessung zu bestimmen und damit die Wirksamkeit der Freiheitsstrafe in unserer Heimat sowohl hinsichtlich des speziellen wie auch der generellen Prävention zu messen.

Das Verhältnis der Rückfälle ist nur ein grober Index der Wirksamkeit. Schon viel klarer ist das Verhältnis der Entlassenen, die sich bei der Haftentlassung entschließen, sich der Gesellschaft anzupassen und sich der Begehung neuerer Straftaten zu enthalten.

Am klarsten wird aber die spezielle präventive Wirkung der Strafe durch die günstige oder Wirkung der Strafe auf die Verurteilten widerspiegelt. (Die Abhandlung enthält die diesbezüglichen empirischen Daten).

Die generell-präventive Wirkung der Freiheitsstrafe kann bei einem Drittel der Bevölkerung unmittelbar wahrgenommen werden. Bei zwei Drittel können wir nur von einer mittelbaren Wirkung sprechen.

Zur Untersuchung der Wirksamkeit genügen die ersten drei Jahre nach der Entlassung, weil die danach begangenen Verbrechen kaum mit der Wirkung der Strafe in Zusammenhang gebracht werden können.